IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1360 of 2004
IN
SPECIAL CIVIL APPLICATION No. 5256 of 2002

WITH

SPECIAL CIVIL APPLICATION No. 1259 of 2005

WITH

MISCELLANEOUS CIVIL APPLICATION No. 327 of 2004
IN
SPECIAL CIVIL APPLICATION No. 5033 of 2003

WITH

SPECIAL CIVIL APPLICATION No. 18005 of 2003

WITH

CIVIL APPLICATION No. 11242 of 2005
IN
SPECIAL CIVIL APPLICATION No. 1259 of 2005

WITH

CIVIL APPLICATION No. 2667 of 2006
IN
SPECIAL CIVIL APPLICATION No. 1259 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

AND

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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TUSHAR D BHATT - Appellant

Versus

STATE OF GUJARAT AND OTHERS - Respondents

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Appearance :

LETTERS PATENT APPEAL No. 1360 of 2004

MR YATIN OZA, LEARNED SENIOR ADVOCATE
WITH MR BP GUPTA for the Appellant.
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL
WITH MS SANGEETA VISEN, ASSISTANT GOVERNMENT PLEADER
for Respondents : 1 - 2.
MR DEVANG NANAVATI WITH MR DEEPAK SHUKLA
FOR M/S NANAVATI & NANAVATI for Respondent : 2.
Respondent : 3 - Deleted.

SPECIAL CIVIL APPLICATION No. 1259 of 2005

MR KETAN D SHAH for the Petitioner.
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL
WITH MS SANGEETA VISEN, ASSISTANT GOVERNMENT PLEADER
for Respondents : 1 - 3.
MR RJ OZA for Respondent : 4.
MR JITENDRA MALKAN for Respondent : 4.
RULE SERVED BY DS for Respondents : 5, 10, 13.
MR DEVANG NANAVATI WITH MR DEEPAK SHUKLA
FOR M/S NANAVATI & NANAVATI for Respondent : 6.
MS AMRITA M THAKORE for Respondent : 7.

MR HARIN P RAVAL for Respondents : 8 - 9, 11 - 12.

MISCELLANEOUS CIVIL APPLICATION No. 327 of 2004

MR BP GUPTA for the Applicant.
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL
WITH MS SANGEETA VISEN, ASSISTANT GOVERNMENT PLEADER
for Respondents : 1 & 3.
None for Respondent No. 2.

SPECIAL CIVIL APPLICATION No. 18005 of 2003

MR ND BUCH FOR M/S NANAVATY ADVOCATES for the Petitioner.
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL
WITH MS SANGEETA VISEN, ASSISTANT GOVERNMENT PLEADER
for Respondents : 1 - 3.
None for Respondent : 4.

CIVIL APPLICATION No. 11242 of 2005

MR ASHWIN L SHAH for the Petitioner.
MR KETAN D SHAH for Respondent : 1.
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL
WITH MS SANGEETA VISEN, ASSISTANT GOVERNMENT PLEADER
for Respondents : 2 - 4.
MR RJ OZA for Respondent : 5.
MR JITENDRA MALKAN for Respondent : 5.
RULE SERVED BY DS for Respondents : 6.
MR DEVANG NANAVATI WITH MR DEEPAK SHUKLA
FOR M/S NANAVATI & NANAVATI for Respondent : 7.

CIVIL APPLICATION No. 2667 of 2006

MR KETAN D SHAH for the applicant.
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL
WITH MS SANGEETA VISEN, ASSISTANT GOVERNMENT PLEADER
for Respondents : 1 - 3.
MR RJ OZA for Respondent : 4.
MR JITENDRA MALKAN for Respondent : 4.
None for Respondents : 5, 10, 13.
MR DEVANG NANAVATI WITH MR DEEPAK SHUKLA
FOR M/S NANAVATI & NANAVATI for Respondent : 6.
MS AMRITA M THAKORE for Respondent : 7.
MR HARIN P RAVAL for Respondents : 8 - 9, 11 - 12.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 23 - 24/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

LETTERS PATENT APPEAL NO. 1360 OF 2004

IN

SPECIAL CIVIL APPLICATION NO. 5256 OF 2002

1. This Letters Patent Appeal with other Writ Petitions, being Special Civil Application Nos. 1259 of 2005 (PIL) and 18005 of 2003 (PIL) and other matters were placed before the Hon'ble First Court consisting of Acting Chief Justice Mr. Y. R. Meena, J. and Mr. Anant S. Dave, J. However, Justice Dave made exception, therefore, as per the administrative orders passed by the learned Acting Chief Justice, all these matters were specially assigned to this Court. Accordingly, all the matters were heard by this Court.

2. We have heard learned Senior Advocate Mr. Yatin N. Oza appearing with learned Advocate Mr. B. P. Gupta for the appellant, learned Advocate General Mr. Kamal Trivedi appearing with Assistant Government Pleader Ms. Sangeeta Vishen for respondent No. 1 - State of Gujarat, and learned Advocate Mr. Devang

Nanavati for respondent No. 2. Respondent No. 3 - Hon'ble Minister for Health and Family Welfare was deleted as per the order dated 04-05-2004 passed by the learned Single Judge of this Court, therefore, after showing his name in the appeal, his name was deleted from the appeal as well.

3. Letters Patent Appeal is filed by the appellant-original petitioner under Clause 15 of the Letters Patent wherein he has challenged the judgment and order dated 14-05-2004, passed by the learned Single Judge (Akshay H. Mehta, J.) in Special Civil Application No. 5256 of 2002 whereby the learned Single Judge dismissed his writ petition i.e. Special Civil Application No. 5256 of 2002, challenging his impugned order of dismissal dated 22-05-2002 passed by the State Government.

4. Learned Advocate Mr. Oza appearing for the appellant stated that in this case, mainly, on two grounds i.e. (i) for remaining absent from duty, and (ii) for using intemperate language, the appellant was dismissed from service by respondent No. 1, which is challenged by him on the following grounds:

(i) While issuing show-cause notice, respondent No. 2 had already made up mind, therefore, the appellant-petitioner was seriously prejudiced in his defence;

(ii) In the instant case, though show-cause notice was issued by respondent No. 2, the impugned order of dismissal came to be passed by respondent No. 1, which is the higher authority to respondent No. 2, thus, his valuable right of appeal to the respondent - State of Gujarat was taken away;

(iii) Punishment of dismissal was shockingly disproportionate to the guilt found to be proved; and,

(iv) Respondent No. 2 initiated disciplinary proceedings with *mala fide* intention and, therefore, the entire disciplinary proceedings and the impugned order of dismissal are vitiated, therefore, the same may be quashed and set aside.

5. Before considering the aforesaid submissions, relevant facts are required to be stated which are as under:

The appellant had joined service of respondent No. 1 as Food Inspector on 01-12-1982. Since then, for a period of about 14 years, he worked as Food Inspector at Ahmedabad as well as Gandhinagar Circle. Thereafter, after a period of 14 years, he was transferred for the first time in 1996 to Rajkot. There, he remained for about 3 years. On 30-09-1999, he was transferred to Bhuj. However, he did not join duty there at Bhuj and after a period of about 20 days i.e on 04-10-1999, he sent a fax message of illness of his mother. Though he was relieved on 05-10-1999 from Rajkot, he did not join at Bhuj. Instead, he entered into correspondence with respondent No. 2. Later on, he was also given personal hearing in November 1999 by respondent No. 2. Even thereafter, he did not join duty at Bhuj. Thereupon, on 04-01-2000, the Assistant Commissioner, Bhuj, called upon him to immediately join the service, but he did not join. On 10-01-2000, he was clearly informed that he was flouting the order of transfer passed by respondent No. 2 by not joining at

Bhuj and served with show cause notice for remaining absent from duty. He submitted his reply dated 17-01-2000 to the said show cause notice and bluntly refused to join at Bhuj. Ultimately, by an order dated 08-03-2000, he was suspended from the service pending inquiry. It was only, thereafter, he made a symbolic report on 27-04-2000 at Bhuj with condition in pursuance of the order of transfer dated 30-09-1999.

6. Later on, he was served with charge-sheet dated 05-05-2000 for the following 7 charges:

(i) He remained unauthorisedly absent between the period 11-10-1999 and 27-04-2000;

(ii) He on his own decided the place of discharging his duty without receiving any prior permission of the competent officer instead of reporting at transferred place;

(iii) He exerted mental pressure and also gave threats by writing letters to the head of the department for transferring him to a place of his choice;

(iv) He acted beyond his official authority by giving notice to his superior officer under the provisions of Gujarat Civil Services (Discipline and Appeal) Rules;

(v) He flouted and disobeyed the orders of the head of the department as well as the head of the office;

(vi) Ignoring the office orders issued by the Government, he directly represented to his head of the department regarding his transfer; and,

(vii) He used intemperate language not befitting a Government employee.

7. He was given full opportunity to defend his case in the inquiry and on conclusion of the inquiry, Inquiry Officer, by his detailed report, found almost all the charges levelled against him to be proved and sent his Report. Disciplinary Authority concurred with the same and the appellant was served with second show cause notice by respondent No. 2 calling

upon him to show cause within 15 days, as to why one of the punishments indicated in Rule 6 of Gujarat Civil Services (Discipline and Appeal) Rules should not be imposed. He sent his first reply dated 12-11-2001 followed by his second reply dated 10-12-2001. In view of the serious allegations levelled by the appellant against respondent No. 2, he decided to refer the matter to the highest authority i.e. respondent No.1 - State of Gujarat for passing appropriate order in the matter. After considering his replies dated 12-11-2001 and 10-12-2001, respondent No. 1, by his impugned order dated 22-05-2002, dismissed the appellant from service. **[**At this stage, it may be stated that after the papers including replies dated 12-11-2001 and 10-12-2001 were forwarded by respondent No. 2 to respondent No. 1, the appellant-petitioner submitted his third belated reply dated 30-04-2002 making serious allegations against respondent No. 1, therefore, the said reply was not forwarded by respondent No. 2 to respondent No. 1.**]**

8. When the aforesaid order of dismissal was challenged by the appellant-petitioner before this

Court in writ petition, the learned Single Judge, after considering all the arguments advanced by the learned Counsel for the appellant, dismissed the writ petition by his judgment running into 29 typed pages, as, according to him, the case of absenteeism and use of intemperate language was found to be proved in the domestic inquiry which was not challenged and when the authority thought it fit to dismiss him from service, then it was not open to him to interfere with the same in writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition was dismissed.

9. In view of the above back-drop, now we will consider the arguments advanced by Mr. Oza for the appellant.

10. First contention of Mr. Oza was that respondent No. 2 had already made up his mind while issuing show cause notice against the appellant-petitioner and thereby, serious prejudice was caused to him. This submission of Mr. Oza has no substance. In fact, after making the submission, he was not in a position to elaborate it. How the prejudice was caused not shown to us. Hence, this contention of Mr.

Oza has to be rejected outright and accordingly, it is rejected.

11. Second submission made by Mr. Oza was that the instant case suffers from the vice of *mala fide*. He submitted that respondent No. 2 with *mala fide* intention initiated disciplinary proceedings against the petitioner-appellant and ultimately, the State Government i.e. respondent No. 1 dismissed him from service. We have been taken through the averments regarding *mala fide* made by the petitioner in his writ petition. Having carefully gone through the same, we find that, all throughout allegations were made against respondent No. 2 and respondent No. 3 - Hon'ble Minister of Health and Family Welfare, who was subsequently deleted from the cause title. As such, individually, no specific allegation was made against respondent No. 2. In fact, the tone and tenor of the petition was that whatever was done by respondent No. 2 was at the behest of respondent No. 3 - Minister. Once the Minister concerned was deleted, then his submission regarding *mala fide* cannot be accepted. Accordingly, it is rejected.

12. The third contention raised by Mr. Oza was

that when show cause notice was issued by respondent No. 2, then he himself should have passed the order. Instead, he forwarded the papers to respondent No. 1 - State of Gujarat which was an Appellate Authority and respondent No. 1 in turn dismissed him from service and, thereby, his valuable right of appeal was taken away. However, later on, this contention was given up, as it was given up before the learned Single Judge also, which can be seen from the order passed by learned Single Judge in paragraph 5.3 of his judgment.

13. This brings us to the last contention raised by learned Senior Advocate Mr. Oza for the appellant, namely, that the penalty of dismissal is shockingly disproportionate. He submitted that for remaining absent from duty for some time, one cannot be dismissed from service. Similarly, for making use of intemperate language also, one cannot be dismissed. According to his submission, at the most, it is a case of minor punishment and not a maximum penalty of dismissal. He submitted that while passing the impugned order of dismissal, the authority has also not taken into consideration unblemished long standing service of about 16 years of the appellant.

He submitted that the penalty of dismissal is nothing but a death penalty to his family. If this Court does not interfere with the said order of dismissal, then his entire family will be ruined. This was vehemently opposed by the learned Advocate General Mr. Kamal Trivedi for the respondent - State. He submitted that, in the instant case, if this Court examines the entire conduct of the appellant, then it will become clear that it is a case of maximum penalty of dismissal. He submitted that when the Disciplinary Authority thought it fit to inflict maximum penalty of dismissal, then this Court in Letters Patent Appeal may not interfere with the same. He submitted that coupled with absenteeism, serious charge of using intemperate language was also found to be proved. He submitted that if this Court interferes with the order of penalty in this case, then it may lead to gross indiscipline, which would not be in the interest of any one. He, therefore, submitted that after considering the entire facts of the case, if the Disciplinary Authority has come to the conclusion that the charges are so serious which called for only and only penalty of dismissal and inflicted penalty of dismissal on the appellant, then this Court may not interfere with such orders in this

Letters Patent Appeal, more particularly, when the learned Single Judge also refused to interfere in his writ jurisdiction. He also submitted that this is not a regular First Appeal, but this is a Letters Patent Appeal, the scope of which is not that wide like regular First Appeal. In support of his submissions, he cited several judgments of the Hon'ble Supreme Court on this point. As against this, learned Senior Advocate Mr. Oza for the appellant also cited many judgments of the Hon'ble Supreme Court. However, we have refrained ourselves from dealing with the same in this order, as in our considered opinion, this was a fit case of dismissal from service.

14. Few glaring facts of the case are as under:-

In December 1982, the appellant was appointed as Food Inspector and posted at Ahmedabad. For a long period of about 14 years, he worked at Ahmedabad and for the first time, in April 1996, he was transferred to Rajkot. There, he remained for a period of more than 3 years and in end of September 1999, he was transferred from Rajkot to Bhuj. Instead of carrying out the order of transfer, he

showed stubborn attitude and did not join at Bhuj. On 04-10-1999, he sent a fax message of granting one week's leave on the ground of illness of his mother, but on 05-10-1999, he was relieved from Rajkot. It is to be noted that though the period of one week was over on 11-10-1999, he did not join at Bhuj. Instead, he preferred to challenge his order of transfer before this Court by way of writ petition on 20-10-1999. The said writ petition was dismissed as withdrawn on 26-10-1999. Then, he started writing letters to his superior officer and in his three letters dated 05-11-1999, 07-01-2000 and 17-01-2000, used intemperate language. Because of this, he was placed under suspension pending inquiry by an order dated 08-03-2000. It is only thereafter that he made his symbolic report of joining at Bhuj on 27-04-2000 i.e. after a period of more than 6 months of his order of transfer that too on a condition that he should be transferred either to Ahmedabad or Gandhinagar and that he will not continue at Bhuj even for a single day. In fact, thereafter, he never remained present at Bhuj.

On 05-05-2000, charge-sheet was issued against him wherein in all 7 charges were levelled

against him. During the inquiry, he demanded certain documents from the Inquiry Officer which was not given to him as they were not relevant. In fact, those documents were not ever relied upon by respondent No. 1 while passing order of dismissal. Accordingly, he was informed about the same on 09-11-2000. He was required to submit his defence statement before the Inquiry Officer on or before 05-08-2001, but he did not submit his final defence for more than a period of one month. Therefore, on 26-09-2001, the Inquiry Officer requested the appellant to submit his final defence statement. At last, he submitted his final defence statement only on 04-10-2001. Thereafter, the Inquiry Officer submitted his report against him.

When the Disciplinary Authority i.e. respondent No. 2 issued show cause notice to him calling upon him to show cause as to why major penalty should not be imposed against him, then, he made serious allegations against the Inquiry Officer and the respondent No. 2 in his replies dated 12-11-2001, 10-12-2001 and 01-02-2001. Thereupon, the whole matter was referred by respondent No. 2 to

respondent No. 1 - State of Gujarat, as he thought it not fit to pass any order in the matter in view of serious allegations made against him by the appellant.

Considering his replies dated 12-11-2001 and 10-12-2001, the Disciplinary Authority i.e. respondent No. 1 passed the order of dismissal on 22-05-2002. In between the appellant submitted another belated reply dated 30-04-2002 to respondent No. 2 wherein again, he made serious allegations against Inquiry Officer by saying that he had submitted his report under the political pressure and the command of the authority. Not only that, he made direct allegation of corruption against respondent No. 2 himself. After stating so, he had stated that if required, he may be personally heard in the matter and appropriate order be passed in the interest of the Government (Page 203 to 210 of the compilation). As stated earlier, after waiting for a considerable time, respondent No. 2 had already referred the matter to the State Government on 25-01-2002. Therefore, there was no question of forwarding that

reply to the State Government by respondent No. 2 as it was addressed to him and he was already seized of the matter by forwarding all the papers to respondent No. 1. This was the conduct of the appellant once he was transferred from Rajkot to Bhuj on 30-09-1999 till 30-04-2002 when he wrote last letter to respondent No. 2.

16. Can a Government servant insist for a particular place of posting? Can a Government servant be allowed to flout the orders of the superior officer in this manner? Can he be allowed to let go with minor punishment for use of intemperate language? Answer would be **"NO"**.

On the facts of the case, admittedly, the appellant flouted the orders of transfer and remained absent from duty without leave for a considerable long time and for getting him transferred to either at Ahmedabad or Gandhinagar, he indulged in a practice which is highly deplorable. It was nothing but simple attempt to browbeat the superior officer. One cannot get his / her order of transfer cancelled

by making use of intemperate language and indulging in this type of tactics. It will lead to gross indiscipline which is never in the interest of the institution or any one. This type of pressurising practice must be viewed seriously. On peculiar facts of this case, if the authority has thought it fit to pass order of dismissal, then, certainly, this Court will not interfere with such order in Letters Patent Appeal, more particularly, when the learned Single Judge of this Court has also refused to exercise his extra-ordinary jurisdiction under Article 226 of the Constitution of India in favour of the appellant.

17. Having carefully gone through the order passed by the learned Single Judge, we are of the considered opinion that the learned Single Judge has rightly rejected the contention of Mr. Oza regarding pre-judging of issue by respondent No. 2, on the ground that the question of imposition of penalty comes only when the entire material is placed before the authority. Merely because it was stated by respondent No. 2 in the show cause notice that he *prima facie* agrees with the finding recorded by the

Inquiry Officer, would not mean that the decision to dismiss the petitioner from service was already taken by respondent No. 2. The learned Single Judge was right in observing that in any case, the petitioner was not prejudiced by such observations and that no real prejudice was caused to the petitioner.

18. One more contention which was raised before the learned Single Judge regarding opportunity of personal hearing not accorded to the petitioner by the authority before passing the impugned order of dismissal was rejected by the learned Single Judge on the ground that in his first two replies dated 12-11-2001 and 10-12-2001, he had never asked for personal hearing. It was at a belated stage when respondent No. 2 had already forwarded the papers of the case to respondent No. 1, at that time, by his letter dated 30-04-2002, he asked for personal hearing from respondent No. 2 by making serious allegations against him. When respondent No. 2 was seized of the matter, then there was no question of giving any personal hearing to the appellant.

19. The next contention raised before the learned Single Judge by the petitioner was that respondent No. 2 had not forwarded his representation / reply dated 30-04-2002 to respondent No. 1 - State of Gujarat which resulted into serious prejudice. It was rejected by the learned Single Judge on the ground that he had already submitted his two replies dated 12-11-2001 and 10-12-2001 and the third reply dated 30-04-2002 was not within a reasonable time and that it was not obligatory upon the Disciplinary Authority to take into consideration the said belated reply. For arriving at this conclusion, the learned Single Judge has rightly placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Managing Director, ECIL Vs. B. Karunakar, AIR 1994 SC 1074** and the Division Bench of this Court in the case of **G. D. Dave Vs. State of Gujarat, 2004 (1) GLH 603.**

20. The next contention regarding disproportionate punishment raised before the learned Single Judge was rejected by the learned Single Judge by observing that transfer is an unavoidable incident of government service and whenever the order of

transfer is passed, normally, it is to be presumed that it is passed in routine course for administrative exigencies. Non-compliance of transfer order and remaining absent for such a long period and use of intemperate language for getting his order of transfer cancelled is a very serious misconduct for which only penalty of dismissal should have been imposed and rightly imposed by the authority. We fully agree with the same. In the instant case, though the order of transfer was passed on 30-09-1999, he made a symbolic report of attending on 27-04-2000 after six months at Bhuj and thereafter, he never remained at Bhuj. Even in that report, he put up the condition that he should be posted immediately to Ahmedabad and that he would not be able to work even for a minute at Bhuj. When he was not transferred from Bhuj, then he threatened respondent No. 2 in his letter dated 05-11-1999 to expose him if his transfer was not cancelled and not posted at Ahmedabad by calling Press Conference and that he would also file Public Interest Litigation before the High Court, which, in fact, he did not file but managed to get it filed through a Private

Typist of this Court. Thereafter, by another letter dated 17-01-2000, he threatened respondent No. 2 to take decision regarding his transfer within 4 days; otherwise, he would expose him regarding so-called scandals committed by him relating to Food and Drugs cases by producing convincing evidence. Not only that, he forwarded details about it to the Chief Minister, Secretary, Health and Family Welfare Department and also the concerned Minister. These facts and instances of use of intemperate language, some of which have been produced in paragraph 6.3 of judgment of the learned Single Judge, running at page AD of the compilation, are as under:

> "....Instances of use of intemperate language have been described in detail while discussing charge No. 7. They are: '(a) his transfer to Bhuj was not only illegal but disgusting, (b) respondent No. 2 runs the administration of Food & Drugs Control Department as his private concern, (c) the Commissioner is encouraging irregularities and corrupt practices in the department and by such corrupt administration he was damaging the health of people, (d) he was also creating scandals with the help of Food Inspectors, (e) whatever the other officers will have to suffer on account of scandals, respondent No. 2 would be responsible for the same, (f) whatever the scandals that have been done by the officers of this department in the past he (the petitioner) would be constrained to bring them to light

> even at the cost of the discipline (of the service), (g) respondent No. 2 should cancel his order of transfer, which is illegal and he should be immediately posted at Ahmedabad or Gandhinagar, (h) that respondent No. 2 is directly involved in corrupt practices and if the order of transfer was not cancelled, he would expose scandals to the public and whatever the consequences it would be sole responsibility of respondent No. 2, (i) if the order was not cancelled, he would be compelled to take such steps, (j) he would expose them by having a meeting with the Secretary, Health Department and the Chief Minister regarding the corrupt practices, the irregularities done with the help of the Health Minister with a view to harass him if his order of transfer was not cancelled within four days, and (k) kindly render your explanation why steps should not be taken against you (respondent No. 2) for the corrupt practices committed by him.' It is, therefore, to be seen that for what purpose and what type of intemperate language has been used....."

Considering the aforesaid, the learned Single Judge was of the opinion that strict view was required to be taken in the matter by the Disciplinary Authority and when the Disciplinary Authority had taken such a strict view of the matter and passed an order of dismissal, then there was no question of interference.

21. We also fully agree with the observations made by the learned Single Judge in paragraph 10 of

his judgment that:

> "It is well established proposition of law that scope of judicial review of the action taken by disciplinary authority against the delinquent is very limited. It is only when such order of punishment is found to be so perverse that no reasonable person can pass such order or the punishment imposed is shockingly disproportionate to the guilt established or there is violation of any fundamental rights or the principles of natural justice. The facts of this case do not warrant any such conclusion to be drawn by this Court and no interference with the decision of the disciplinary authority is warranted. If the petitioner is allowed to escape with minor penalty as suggested by Mr. Oza, it will certainly form a bad precedent and in a given case, some other unscrupulous Government employees would resort to arm twisting of his superior for extorting a decision in his favour. Such leniency cannot be permitted. On the question of unauthorized absenteeism also Mr. Oza has placed reliance on several other decisions. However, they are on the same line, hence dealing with them would be mere repetition. Further he has been held guilty not only of that charge, but composite charge of in all seven different nature which have been adequately prescribed in the charge-sheet."

22. Before parting, we may state that the scope of Letters Patent Appeal is limited, but in the interest of justice, we have undertaken the exercise of going through the entire record of the case and considered the arguments of the learned Counsel for

the appellant as if we were hearing the writ petition. We have also considered the reasons assigned by the learned Single Judge for dismissing the writ petition with which we fully agree.

23. In view of the above, this appeal fails and is hereby dismissed with costs.

SPECIAL CIVIL APPLICATION NO. 1259 OF 2005

1. This and other matters were ordered to be heard together with Letters Patent Appeal No. 1360 of 2004. When main Letters Patent Appeal No. 1360 of 2004 is already dismissed, then, in our considered opinion, this matter is also required to be dismissed.

2. The *locus* of the petitioner in filing the present Public Interest Litigation is seriously challenged by the respondents. The petitioner is working as a Typist in this Court premises, as stated in the reply-affidavit, which is not disputed. He is filing one after the other petitions in the

name of Public Interest Litigation. He seems to have been misused as a tool by somebody. No such petition can be entertained by this Court as Public Interest Litigation. Accordingly, this petition is dismissed. Rule discharged. No costs.

MISCELLANEOUS CIVIL APPLICATION NO. 327 OF 2004

IN

SPECIAL CIVIL APPLICATION NO. 5033 OF 2003

1. Heard learned Advocate Mr. B. P. Gupta for the applicant, learned Advocate General Mr. Kamal Trivedi for respondent - State of Gujarat.

2. The above main matter i.e. Special Civil Application No. 5033 of 2003 was disposed of by the Division Bench of this Court as withdrawn by a brief order dated 14-07-2003, which reads as under:

> "The grievance of the petitioner is that no action is being taken on the basis of the report of the Vigilance Commissioner against the erring officers. It is now stated on oath in the affidavit-in-reply, which is filed on behalf of the State Government that the Vigilance Commissioner's report is under consideration. In para-14, it is stated that the recommendations of the

> Vigilance Commissioner were received recently i.e. on 21-03-2003 and the process of acceptance of the Vigilance Commission's report and necessary action is in progress. The learned Advocate General states that the process of approving the chargesheet against two of the officers is about to be finalised, and the other matters covered by the Vigilance Commissioner's report and recommendations are under active consideration of the State Government and appropriate decision will be taken thereon within two months from today. We accordingly direct that appropriate decision be taken on the Vigilance Commissioner's recommendations expeditiously by the State Government, preferably within two months from today. In view of the fact that the action is being taken by the State Government on the basis of the report and recommendations of the Vigilance Commissioner, no further orders are required to be made at this stage and no monitoring is necessary in this matter by the Court.
>
> The counsel for the petitioner now at this stage states that the petitioner seeks permission to withdraw this petition at this stage. The petition is permitted to be withdrawn. Notice is discharged with no order as to costs. Liberty to move in case of difficulty."

3. This Contempt Application was filed in the above petition by the applicant - original petitioner on the ground that the respondents have not complied with the order dated 14-07-2003. The reply-affidavits filed in the matter show that appropriate decisions have been taken. It may not be as per the

expectation of the applicant, but that is no ground for punishing the respondents for committing contempt of the Court.

4. Considering the averments made in the application and the reply-affidavits, we are of the considered opinion that there would no be question of willful breach of the order committed by the respondents. Hence, dismissed. Notice discharged. No costs.

SPECIAL CIVIL APPLICATION NO. 18005 OF 2003

1. The petitioner has filed this petition as Public Interest Litigation and prayed that the respondents be directed to take strict action against the officers who are liable for committing illegalities as demonstrated. Reply-affidavit is filed in this matter on behalf of respondent - State of Gujarat. Along with it, relevant record is also placed on record. Other averments made in the petition are denied.

2. Apart from the *locus standi* of the petitioner to file this petition as Public Interest Litigant, prayers made in the petition also cannot be granted, as those officers have not been impleaded as party-respondents in their individual capacity in the petition.

3. In view of the above, this petition is dismissed. No costs.

CIVIL APPLICATION NO. 2667 OF 2005

IN

SPECIAL CIVIL APPLICATION NO. 1259 OF 2005

This is an amendment application seeking amendment in above main Special Civil Application No. 1259 of 2005 which is dismissed today. Hence, this application does not survive and accordingly, it is dismissed.

CIVIL APPLICATION NO. 11242 OF 2005

IN

SPECIAL CIVIL APPLICATION NO. 1259 OF 2005

Main Special Civil Application No. 1259 of 2005 is dismissed. Present Civil Application for impleading as party-respondents would not survive and accordingly, it is dismissed.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath